

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

11/13/85
RCM-I

FILE: B-219699

DATE: November 13, 1985

MATTER OF: Fenneman Company, Inc., et al. -
Davis-Bacon Act Debarment

DIGEST:

The Department of Labor recommended debarment of a prime contractor and certain of its officers and controlling employees under the Davis-Bacon Act because of underpayment of wages to its employees and falsification of certified payroll records. Based on our independent review of the record in this matter, we find that there was substantial violation of the Act in that the underpayment of wages was intentional. We conclude that the contractor disregarded its obligations to its employees. Therefore, the contractor and the named individuals will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), has submitted a recommendation that the names of a business firm and certain of its officers and controlling employees be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982). Those names are: Fenneman Company, Inc., Wendy Fenneman, individually and as President, Michael Fenneman, individually and as Vice President, and James Cannon, individually and as Business Manager of the firm. For reasons that follow, we concur in that recommendation.

Fenneman Company, Inc. (Fenneman), performed work as a prime contractor under contract number V538C216 to install an acoustical ceiling at the Veterans Administration Medical Center, Chillicothe, Ohio. This contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984) the contractor was to submit payroll records certified as to correctness and completeness.

As a result of an investigation, the DOL found that employees were not paid the minimum wages required

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by the Davis-Bacon Act and that the certified payrolls were falsified. By certified letter dated September 24, 1984, Fenneman, and the above named individuals were given notice in detail of the violations with which they were charged and that debarment was possible. Further, they were given the opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1984). The DOL reports that while this letter was received, no hearing was requested.

After reexamining the record, DOL found that Fenneman, and the above named individuals, disregarded their obligations to employees under the Davis-Bacon Act, without any factors militating against debarment. Therefore, DOL recommended that the name of the firm and the above officers and employees be placed on the ineligible bidders list for violations of that Act.

The Davis-Bacon Act provides that the Comptroller General is authorized to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning employee classification for minimum wage purposes, and "substantial violations" which were intentional as demonstrated by bad faith or gross carelessness in observing minimum wage obligations to employees under the Act. Falsification of payroll records is a basis for debarment under the Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we find that there were substantial violations of the Act in that the underpayment of employees was intentional as demonstrated in the falsification of certified payroll records. Therefore, we conclude that the Fenneman Company, Inc., disregarded its obligations to employees under the Davis-Bacon Act. The record also shows that the individuals named above participated in the conduct that violated the Davis-Bacon Act.

Accordingly, the name Fenneman Company, Inc., Wendy Fenneman, individually and as President,

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Michael Fenneman, individually and as Vice President, and James Cannon, individually and as Business Manager will be included on the list of ineligible bidders to be distributed to all departments of the Federal government. Pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them, or to any firm, corporation, partnership, or association in which any of them have an interest until 3 years have elapsed from the date of publication of such list.

A handwritten signature in dark ink, appearing to read "Henry R. Wray". The signature is fluid and cursive, with the first name "Henry" and last name "Wray" clearly distinguishable.

Henry R. Wray
Associate General Counsel